

115TH CONGRESS
2D SESSION

S. 2560

To authorize the Secretary of the Interior to establish a program to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2018

Mr. RISCH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the Secretary of the Interior to establish a program to facilitate the transfer to non-Federal ownership of appropriate reclamation projects or facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reclamation Title
5 Transfer Act of 2018”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to facilitate the transfer
8 of title to eligible facilities to qualifying entities that have

1 completed the repayment of the capital costs of the eligible
2 facilities through capital repayment contracts with Rec-
3 lamation.

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

6 (1) CONVEYED PROPERTY.—The term “con-
7 veyed property” means an eligible facility that has
8 been conveyed to a qualifying entity under section 4.

9 (2) ELIGIBLE FACILITY.—The term “eligible fa-
10 cility” means a facility that meets the criteria for
11 potential transfer established under section 5(a).

12 (3) FACILITY.—

13 (A) IN GENERAL.—The term “facility”
14 means—

15 (i) a Reclamation project or facility;
16 or
17 (ii) a portion of a Reclamation project
18 or facility.

19 (B) INCLUSIONS.—The term “facility” in-
20 cludes a dam or appurtenant works, infrastruc-
21 ture, a recreational facility, a building, a dis-
22 tribution and drainage works, and associated
23 land or interest in land or water.

24 (C) EXCLUSIONS.—The term “facility”
25 does not include a Reclamation project or facil-

1 ity, or a portion of a Reclamation project or fa-
2 cility, that—

(5) RECLAMATION.—The term “Reclamation” means the Bureau of Reclamation.

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior, acting through the
3 Commissioner of Reclamation.

4 **SEC. 4. AUTHORIZATION OF TRANSFERS OF TITLES TO ELI-**
5 **GIBLE FACILITIES.**

6 (a) IN GENERAL.—Subject to the requirements of
7 this section, the Secretary, without further authorization
8 from Congress, may convey to a qualifying entity all right,
9 title, and interest of the United States in and to any eligi-
10 ble facility, if—

11 (1) not later than 90 days before the date on
12 which the Secretary makes the conveyance, the Sec-
13 retary submits to Congress—

14 (A) a written notice of the proposed con-
15 veyance; and

16 (B) a description of the reasons for the
17 conveyance; and

18 (2) a joint resolution disapproving the convey-
19 ance is not enacted before the date on which the
20 Secretary makes the conveyance.

21 (b) RESERVATION OF EASEMENT.—The Secretary
22 may reserve an easement over a conveyed property if—

23 (1) the Secretary determines that the easement
24 is necessary for the management of any interests re-
25 tained by the Federal Government under this Act;

1 (2) a portion of the conveyed property remains
2 under Federal ownership; and

3 (3) the Secretary enters into an agreement re-
4 garding the easement with the applicable qualifying
5 entity.

6 (c) INTERESTS IN WATER.—The Federal interest in
7 associated water rights and uses relating to a conveyed
8 property, if any, shall be conveyed under this section in
9 accordance with applicable State law pursuant to a written
10 agreement between the Secretary and the applicable qualifi-
11 fying entity.

12 **SEC. 5. ELIGIBILITY CRITERIA.**

13 (a) ESTABLISHMENT.—The Secretary shall establish
14 criteria for determining whether a facility is eligible for
15 conveyance under this Act.

16 (b) MINIMUM REQUIREMENTS.—

17 (1) AGREEMENT OF QUALIFYING ENTITY.—The
18 criteria established under subsection (a) shall in-
19 clude a requirement that a qualifying entity shall
20 agree—

21 (A) to accept title to the eligible facility;
22 (B) to use the eligible facility for substan-
23 tially the same purposes for which the eligible
24 facility is being used at the time the Secretary
25 evaluates the potential transfer; and

(C) to provide, as consideration for the assets to be conveyed, compensation to the reclamation fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093), in an amount that is the equivalent of the net present value of any repayment obligation to the United States or other income stream that the United States derives from the eligible facility to be transferred, as of the date of the transfer.

(ii) the qualifying entity agrees to pay fair market value based on historical or existing uses for the withdrawn land to be conveyed.

1 **SEC. 6. LIABILITY.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), effective beginning on the date of conveyance of any
4 eligible facility under this Act, the United States shall not
5 be liable under any law for damages of any kind arising
6 out of any act, omission, or occurrence based on the prior
7 ownership or operation of the conveyed property.

8 (b) LIMITATION.—The United States shall retain the
9 responsibilities and authorities of the United States for
10 a conveyed property based on the prior ownership or oper-
11 ation of the conveyed property by the United States under
12 Federal environmental laws, including the Comprehensive
13 Environmental Response, Compensation, and Liability Act
14 of 1980 (42 U.S.C. 9601 et seq.).

15 **SEC. 7. BENEFITS.**

16 After a conveyance of an eligible facility under this
17 Act—

18 (1) the conveyed property shall no longer be
19 considered to be part of a Reclamation project; and
20 (2) if the transfer of an entire Reclamation
21 project occurs pursuant to such a conveyance, the
22 qualifying entity to which the conveyed property is
23 conveyed shall not be eligible to receive any benefits,
24 including project power, with respect to the conveyed
25 property, except for any benefit that would be avail-

1 able to a similarly situated entity with respect to
2 property that is not a part of a Reclamation project.

3 **SEC. 8. COMPLIANCE WITH OTHER LAWS.**

4 (a) **OPERATION OF CONVEYED PROPERTY.**—After
5 conveyance of an eligible facility under this Act, the quali-
6 fying entity to which the conveyed property is conveyed
7 shall comply with all applicable Federal, State, and local
8 laws (including regulations) in the operation of the con-
9 veyed property.

10 (b) **FEDERAL ENVIRONMENTAL LAWS APPLICABLE
11 TO TITLE TRANSFER.**—For purposes of achieving compli-
12 ance with Federal environmental laws (including regula-
13 tions) applicable to a transfer of title under this Act, the
14 Federal agency action shall be limited to the change in
15 ownership status of an applicable eligible facility if the
16 ability of the applicable qualifying entity to alter the exist-
17 ing uses or operations of the conveyed property after the
18 conveyance is limited due to the fact that—

19 (1) any modification to the purpose or location
20 of applicable water use would require a modification
21 of a State-issued water right that requires action by
22 the State in which the eligible facility is located; or
23 (2) any modification to the purpose or oper-
24 ation of the eligible facility requires an action by a

1 qualifying entity that is constrained by applicable re-
2 quirements that were established—

3 (A) by an applicable State legislature,
4 State regulatory agency, publicly elected board,
5 appointed board, or other related entity; and

6 (B) through a public process or other,
7 similar procedure that constrains, or imposes
8 public scrutiny or additional accountability on,
9 the ability of the qualifying entity to carry out
10 such a modification.

11 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) IN GENERAL.—There are authorized to be appro-
13 priated to carry out this Act such sums as are necessary.

14 (b) USE OF AMOUNTS.—Amounts made available
15 under subsection (a) may be used—

16 (1) to carry out any investigations appropriate
17 to carry out this Act; and

18 (2) to pay any other costs associated with con-
19 veyances under this Act, including an appropriate
20 Federal share, as determined by the Secretary, of
21 the costs of compliance with the National Environ-
22 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
23 and any other applicable law.

24 (c) NOT TREATED AS PROJECT COSTS.—Expendi-
25 tures made by the Secretary under this Act—

- 1 (1) shall not be a project cost assignable to a
- 2 Reclamation project; and
- 3 (2) shall be nonreimbursable.

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